

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRUCE STEELE
Claimant

APPEAL NO. 11A-UI-15691-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BEATON INC
BURGER KING**
Employer

**OC: 11/06/11
Claimant: Appellant (5)**

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Bruce Steele, filed an appeal from a decision dated November 29, 2011, reference 01. The decision disqualified him from receiving unemployment benefits because he had quit work without good cause attributable to the employer. After due notice was issued a hearing was held by telephone conference call on January 10, 2012. The claimant participated on his own behalf, with Gerivenea Green and was represented by Iowa Legal Aid in the person of Elizabeth Norris. The employer, Burger King, participated by Controller Kathy Frerichs.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bruce Steele was employed by Burger King from June 8, 2009 until October 16, 2011 as a part-time crew member. He received a final written warning on April 4, 2011, for two incidents of arguing with managers that same week. The manager spoke with him one on one and informed him he should have been fired at that time but because he needed the job the employer was going to give him one more chance, but that any further incidents would lead to discharge.

On October 15, 2011, the hourly manager on duty, Crystal Henderson, told the claimant to make a sandwich and he began arguing. In frustration Ms. Henderson threw down her headset on a table and it bounced and hit Mr. Steele. At that time he told her if she “hit him again” he was going to “beat her ass.” He was sent home and the next day discharged by phone the next day by Manager Phillip Calvin.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant acknowledged he had told the manager he would "beat her ass." This is a direct threat to a coworker/supervisor because of an accidental strike of a headset which the manager had not aimed at him. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 29, 2011, reference 01, is modified without effect. Bruce Steele did not quit but was discharged for misconduct. He is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs